IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC. APPLICATION No. 4179 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements ?YES

2. To be referred to the Reporter or not ? YES

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3. Whether Their Lordships wish to see the fair copy of the judgement? NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder ? NO

5. Whether it is to be circulated to the Civil Judge ? NO

PRADIP TIBREWAL

Versus

STATE OF GUJARAT

Appearance:

MR SN SOPARKAR for Petitioner

MR.UA TRIVEDI,APP for Respondent No. 1

MR RAVI R TRIPATHI for Respondent No. 2

CORAM : MR.JUSTICE K.J.VAIDYA

Date of decision: 07/01/97

ORAL JUDGEMENT

The petitioner by this Misc. Criminal Application under section 482 of the Code of Criminal Procedure, 1973, has moved this court inter alia praying

for quashing and setting aside the process issued by the learned Chief Judicial Magistrate, Jamnagar, in Criminal Case No.4327/92, pursuant to the complaint filed by the respondent no.2 for the alleged offence punishable under section 138 of the Negotiable Instruments Act, 1881.

2. Perused the complaint and the memo of the petition. The petitioner has raised the following contentions in the petition :

(1) That the complaint is premature as it has been filed before one day before the cause of action arose. According to the petitioner, no prosecution can lie within the period of 15 days from the date of receipt of the impugned notice. In the instant case, the impugned notice was served on the petitioner on 1-9-1992, and in that view of the matter, no complaint could have been filed before 17-9-1992.

(2) That the cheque in question was issued by the complainant and the complainant has not stated in the complaint that the cheque was signed by the petitioner. Under the circumstances no complaint can be filed against the petitioner.

(3) That the disputes between the parties are of civil nature. Infact, disputes are pending between the parties before the competent civil court and in that view of the matter, no criminal offence has taken place.

(4) That the cheque signing authority of the Company is at Calcutta and it had been the practice of company to get the blank cheques signed by the appropriate authority and staff of the company at Baroda deals with the said cheques as per the requirements of the Company. Accordingly, some time in January 1990 one of the members of the staff of the Company at Baroda, gave to the complainant a blank cheque bearing No. 2797904 of the State Bank of Saurashtra with an understanding that the cheque which was to be received from the GEB at Sikka in favour of the company, would be deposited by him in the State Bank of Saurashtra, and that the same would be utilized for taking advance, but not exceeding Rs. 50,000/-. Accordingly, it was agreed that if it was not necessary to utilize the said blank

cheque, the respondent should return the same to the company. Subsequently, it was not necessary for the second-respondent to utilize the said blank cheque as various payments by way of advances were made by the company through its Baroda Office from time to time amounting to Rs. 71,901/=.

2.1 Now turning to the first contention raised by the petitioner, at the very outset, it may be stated that there is indeed no substance worth the name in it. If we carefully examine the complaint, it is quite clear that the accused gave a crossed A/C Payee cheque of Rs. 50,000/- dated 17-8-1992 to the complainant, which he received on 7-7-1992 and was presented on 17-8-1992. It is also further clear from the complaint that the said cheque was returned by the Bank on the ground that there was insufficient funds asking the complainant to refer to drawer (accused). In this view of the matter, the complainant issued the statutory notice (Regd. AD) dated 26-8-1992 which was served on the petitioner on 1-9-1992 informing him regarding the dishonour of the cheque in question, and demanding Rs. 50,000/- to be paid within 15 days from the receipt of the notice, which since till the date of filing of the complaint was not only not paid, but the accused has not even cared to reply the said notice, committing offence under section 138 of the Act. Now, taking into consideration these material dates, it is indeed clear that provisions contained in sections 138 and 142 of the Act have been duly complied with. Under the circumstances, it can not be said that the complaint is premature. Further, it is not disputed that the notice dated 26-8-1992 was served on the accused on 1-9-1992 and thereafter on 16-9-1992 the complaint came to be filed. Now having regard to the provisions contained in proviso (c) to section 138 of the Act if the drawer of the cheque fails to make payment of the amount to the holder in due course of the cheque within 15 days of the receipt of the said notice, the cause of action arises. The expression "within 15 days" is clear enough Thus, when the accused received a notice on 1-9-1992 and complaint came to be filed on 16-9-1992, by no stretch of imagination it can be said that it is premature. Unfortunately, while raising this point, the learned advocate for the petitioner has clearly overlooked the relevant clause (b) of section 142 of the Act, where it is stated that the complaint is required to be filed within one month of the date of cause of action arising under clause (c) of proviso to 138 of the Act. In this view of the matter, the first contention raised by the petitioner stands rejected.

2.2 Turning to the second contention of the petitioner, since the same is ex facie a disputed question of fact which can be raised and dealt with only at the time of trial, it can not be pressed in service at this stage to quash the proceedings and accordingly the same deserves to be rejected.

2.3 Turning to the third contention, so far as the facts and circumstances of this case are concerned, disputes can not be said to be exclusively of a civil nature. Infact, once the facts alleged in the complaint constitutes an offence, falling within the purview of section 138 of the Act, the criminal court has an undoubted jurisdiction to take cognizance of the offence and initiate proceedings pursuant thereto. In this view of the matter, merely because the disputes are pending before the Civil Court, the same cannot oust the jurisdiction of the criminal court to take the cognizance of offence and issue process pursuant thereto. If from the alleged facts two wrongs emanate viz., civil and criminal, it is open to the aggrieved party to resort to either of the two or both. In this view of the matter, this contention also fails and is rejected.

2.4 Turning to the fourth contention, what is contended therein is a matter of defence warranting evidence to be lead and proved at the time of trial, which this court is not supposed to take into consideration at this stage short-circuiting the trial for quashing the proceedings under section 482 of the Code. Accordingly, this contention also stands rejected.

3. In view of the aforesaid discussion, there is indeed nothing on the basis of which any ground is made out to quash the proceedings. In this view of the matter, what deserves to be quashed, set aside and discharged is not the process, but the Rule issued by this court earlier.

4. In the result, this petition fails and is dismissed. Ad-interim relief granted earlier stands vacated. Rule discharged. Having regard to the fact that the criminal case is of the year 1992, the learned Magistrate is directed to expeditiously conduct the trial and dispose of the case as early as possible preferably on or before 31-12-1997.

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JOSHI/Pt*